

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUSAN LAMUSTA : CIVIL ACTION
 :
 v. :
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 :
 LAWSON MARDON WHEATON, INC. : NO. 99-3931

MEMORANDUM

WALDMAN, J.

March 10, 2000

This case was removed to this court from the Philadelphia Court of Common Pleas. Plaintiff has asserted claims under Title VII and the New Jersey Law Against Discrimination ("LAD") for alleged gender discrimination and sexual harassment, and for breach of contract and misrepresentation. Presently before the court is defendant's Motion to Transfer pursuant to 28 U.S.C. § 1404(a).

Plaintiff is a citizen of New Jersey and resides in Atlantic City. Defendant manufactures and markets specialty glass and plastic products. It is incorporated in New Jersey and has its principal place of business in Millville, New Jersey. There is no averment or showing that defendant maintains a workforce or place of business in Pennsylvania. The alleged acts underlying each claim occurred in Cape May or Millville, New Jersey. The identified witnesses are all New Jersey residents, except for two who reside in Switzerland. All of the records pertinent to plaintiff's employment relationship with defendant are in New Jersey.

A district court may transfer a civil action to another district in which it might have been brought to facilitate the convenience of parties, the convenience of witnesses or the interests of justice. See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995) (discussing factors enumerated in 28 U.S.C. § 1404(a)). See also Shutte v. Armco Steel Corp., 431 F.2d 22, 24 (3d Cir. 1970), cert. denied, 401 U.S. 910 (1971); Supco Automotive Parts, Inc. v. Triangle Auto Spring Co., 538 F. Supp. 1187, 1191 (E.D. Pa. 1982). This action clearly could have been filed in the District of New Jersey.

A case may be transferred under § 1404(a), however, only when venue is proper in the transferring court. See Jumara, 55 F.3d at 878; IMS Health, Inc. v. Vality Technology, Inc., 59 F. Supp. 454, 465 (E.D. Pa. 1999); Carty v. Health-Chem Corp., 567 F. Supp. 1,2 (E.D. Pa. 1982). Venue for a Title VII claim is proper only in a "judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice." See 42 U.S.C. § 2000e-5(f)(3). This is the exclusive venue provision for Title VII claims brought in federal courts. See Pierce v. Shorty Small's of Branson, Inc., 137 F.3d 1190, 1191 (10th Cir. 1998);

Johnson v. Payless Drug Stores NW, Inc., 950 F.2d 586, 587-88 (9th Cir. 1991), cert. denied, 505 U.S. 1225 (1992); Bolar v. Frank, 938 F.2d 377, 378 (2d Cir. 1991); Fischer v. A.D.T. Sec. Sys., Inc., 1996 WL 75895, *2 n.2 (E.D. Pa. Feb. 21, 1996); Shuman v. Computer Assocs. Int'l., Inc., 762 F. Supp. 114, 118 (E.D. Pa. 1991). Thurmon v. Martin Marietta Data Sys., 596 F. Supp. 367, 368-69 (M.D. Pa. 1984). Thus, plaintiff could not have sustained venue in this district for this action.¹

Plaintiff, however, initiated suit in a state court which defendant then removed. Accordingly, venue is now governed by the removal statute which creates venue in the federal court to which a case is properly removed. See Polizzi v. Cowles Magazines, Inc., 345 U.S. 663, 665 (1953) (venue of removed actions governed by § 1441(a)); Peterson v. BMI Refractories, 124 F.3d 1386, 1392 (11th Cir. 1997); Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 3d § 3726. Thus, a party in a properly removed action may and must proceed under § 1404(a) to seek any change of venue. Id.; PT United Can co. Ltd. v. Crown Cork & Seal Co., 138 F.3d 65, 72 (2d Cir. 1998).

The moving party bears the burden of justifying a transfer under § 1404(a). Jumara, 55 F.3d at 879. The court has

¹There is clearly no independent basis for jurisdiction, let alone venue, in this district for plaintiff's state law claims. These claims could be maintained here only by virtue of their relationship to the Title VII claim. See 28 U.S.C. § 1367(a).

broad discretion in deciding whether transfer is warranted. Piper Aircraft Co. Reyno, 454 U.S. 235, 253 (1981); Plum Tree, Inc. v. Stockment, 488 F.2d 754, 756 (3d Cir. 1973). Courts consider various relevant private and public interest factors "to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum." Jumara, 55 F.3d at 879 (quoting 15 Wright, Miller & Cooper § 3847).

The relevant factors include the plaintiff's choice of venue; the defendant's preference; where the claim arose; the relative physical and financial condition of the parties; the extent to which witnesses may be unavailable for trial in one of the fora; the extent to which records or other documentary evidence could not be produced in one of the fora; the enforceability of any judgment; practical considerations that could make the trial easy, expeditious or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding local controversies at home; the public policies of the fora; and, the familiarity of the trial judge with the applicable state law in diversity cases. Jumara, 55 F.3d at 879-80.

A plaintiff's choice of forum generally receives substantial weight and is not lightly disturbed. Id. at 879. A plaintiff's choice is not conclusive, of course, or the courts

would not employ a multi-factor test and § 1404(a) would be rendered meaningless. Moreover, a plaintiff's choice of forum receives diminished weight when she chooses a forum in which she does not reside and in which none of the conduct giving rise to her claim occurred. Piper Aircraft Co., 454 U.S. at 256. See also 800-Flowers, Inc. v. Intercontinental Florist, Inc., 860 F. Supp. 128-135 (S.D.N.Y. 1994); Lynn v. Consolidated Rail Corp., 1994 WL 185032, *2 (E.D. Pa. May 13, 1994); National Mortgage Network, 683 F. Supp. at 119; Cain v. De Donatis, 683 F. Supp. 510, 512 (E.D. Pa. 1988); Vivident (U.S.A.), Inc. v. Darby Dental Supply Co., 655 F. Supp. 1359, 1360 (D. N.J. 1987).

The Eastern District of Pennsylvania is neither plaintiff's home district nor the locus of any operative facts underlying this action. The only discernible connection between this litigation and this forum is that plaintiff's attorneys are located here. This is not a relevant factor. See Solomon v. Continental American Life Ins. Co., 472 F.2d 1043, 1047 (3d Cir. 1973); Burstein v. Applied Extrusion Techs., Inc., 829 F. Supp. 106, 112 (D. Del. 1992); Complaint of Bankers Trust Co., 640 F. Supp. 11, 13 n.2 (E.D. Pa. 1985).²

The notion of inconvenience literally is not implicated when the competing fora are Philadelphia and Camden.

²It is represented without contradiction that plaintiff's counsel also is admitted to practice in New Jersey.

Nevertheless, some pertinent factors recognized by the Court in Jumara do militate in favor of transfer.

Plaintiff's choice of venue is the Eastern District of Pennsylvania. Defendant's choice is the District of New Jersey. All of plaintiff's claims arose in the District of New Jersey. She purports, however, to be concerned that "an impartial jury will be difficult to obtain in New Jersey" because of certain media coverage and because with 2,000 employees in Cumberland County, defendant is a major employer there.

The media coverage to which plaintiff points consists of three articles describing in neutral terms an internal restructuring of defendant's operation involving the elimination of certain positions, including one then held by plaintiff. The articles were published seventeen months ago. They do not mention plaintiff. The vicinage from which jurors would be drawn includes almost 1.3 million people. Plaintiffs routinely receive fair adjudications of their claims against defendants which employ a greater number and percentage of persons in the forum. Anyone with a connection to defendant by employment or otherwise would, of course, be identified through normal voir dire. Plaintiff has not remotely shown that any concern about a fair trial in New Jersey is reasonable or legitimate.

There is nothing about the relative condition of the parties which would make litigation in one forum more or less

onerous than in the other. No witnesses or documentary evidence have been identified that would be unavailable in either forum. There has been no suggestion that a judgment rendered in either forum would be unenforceable, although it appears that execution on a judgment, if necessary, might be somewhat easier in New Jersey. There are no apparent issues of trial efficiency or administrative difficulty.

There is no relationship of the community in which this court sits and from which its jurors are drawn to the occurrences giving rise to this litigation. That relationship is strong in the District of New Jersey. The defendant is a corporate citizen of New Jersey. If defendant is culpable, it is for decisions made and a course of conduct undertaken in New Jersey. Resolution of the employment discrimination and sexual harassment claims particularly would be most meaningful and salutary in the community in which these unlawful acts were allegedly perpetrated, in which the alleged perpetrator maintains a workforce and in which the alleged victim was employed and resides.

A court in New Jersey would be more familiar with applicable state law. Federal courts, of course, are often required to apply the law of states in which they do not sit and basic principles of contract law and misrepresentation do not vary widely among the states. Nevertheless, "[t]he interests of

justice are best served by having a case decided by the federal court in the state whose laws govern the interests at stake." Kafack v. Primerica Life Ins. Co., 934 F. Supp. 3, 8 (D.D.C. 1996). Unlike the PHRA, the NJLAD is not consistently interpreted and applied in a manner which parallels Title VII. See Hurley v. Atlantic City Police Dep't., 174 F.3d 95, 120 n.19 (3d Cir. 1999); Carrington v. RCA Global Communications, Inc., 762 F. Supp. 632, 644-45 (D.N.J. 1991). A New Jersey judge would particularly be far more familiar with the intricacies and application of the LAD.

The choice of forum of either party in this case can be accommodated with virtually no inconvenience to the other or to any prospective witness. The ultimate question is whether the lack of any connection between plaintiff's claims and this district and the substantially greater interest of New Jersey in the adjudication of this controversy sufficiently outweigh plaintiff's choice of forum. Giving diminished but still appreciable weight to plaintiff's preference, the court concludes that the answer is yes.

All meaningful ties to and interest in this action lie in New Jersey, the home forum of both parties. This is a very substantial consideration. See, e.g., Kafack, 934 F. Supp. at 6-9 (transferring case from plaintiff's home forum to adjacent district in adjoining state where all material events underlying

his claims occurred, whose law would govern and which had "more compelling" interest in adjudication of controversy). This patently is not an action jurors in this district should be burdened with. Had plaintiff commenced her action in this court, at defendant's behest it would have been transferred to New Jersey pursuant to 28 U.S.C. § 1406(a) as the only proper venue. In every meaningful aspect this is a New Jersey case and should be resolved by a court and jurors in the south Jersey community.

Accordingly, defendant's motion will be granted. An appropriate order will be entered.

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O R D E R

AND NOW, this day of March, 2000, upon
consideration of defendant's Motion to Transfer (Doc. #3) and
plaintiff's response thereto, consistent with the accompanying
memorandum, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and,
pursuant to 28 U.S.C. § 1404(a), the above action is **TRANSFERRED**
to the U.S. District Court for the District of New Jersey at
Camden.

BY THE COURT:

JAY C. WALDMAN, J.